

REMARKS

Claims 1-3, 5-16 and 28-59 are pending in this application. Claims 1, 24 and 59 are independent claims. Claim 59 is added. Claims 1, 2, 5-11, 13-20, 22-25, 28-32, 36, 39-40, 44, 47-48 and 57 are amended. Reconsideration and allowance of the present application are respectfully requested.

Claim Rejections under 35 U.S.C. §112

Claims 1-11, 13-20 and 22-23 stand rejected under 35 USC §112, second paragraph, as being indefinite. The rejection is traversed, in part.

Applicants submit that “a computer configured to communicate” and “a user interface configured to allow a playback manager to access said web server,” as recited in claim 1, “said web server is configured to transmit executable files,” as recited in claim 2, “said web server is configured to store a profile,” as recited in claims 18 and “said web server is configured to include a password logon security module,” as recited in claim 20, meet the definiteness standard. As recited in these claims, the “configured to” phrase is not just an intended result but a condition that is material to patentability.

Claims 1, 2, 5-11, 13-17, 19-20 and 22-23 have been amended to overcome the rejection. Therefore, Applicants respectfully request that the rejections of claims 1, 2, 5-11, 13-17, 19-20 and 22-23 under 35 U.S.C. §112 be withdrawn.

Claim Rejections under 35 U.S.C. §102

Claims 1-3, 14-18, 21, 24-26, 37-41, 44 and 47-52 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,389,467 to Eyal (hereinafter “Eyal”). This rejection is respectfully traversed.

Independent claim 1, in part, recites “at least one playback control device located at a playback location, the at least one playback control device including an output device, memory to store digital media files and a continuous play program, and a controller to control the output of said digital media files to said output device according to said continuous play program.” Independent claim 59, in part, recites “a computer remotely located from at least one playback

control device located at a playback location, wherein said at least one playback control device includes an output device, memory to store digital media files and a continuous play program, and a controller to control the output of said digital media files to said output device according to said continuous play program.” Eyal does not teach or suggest these features.

The Office Action alleged that Col. 13, lines 46-52 and Col. 16, lines 1-5 of Eyal disclose “at least one playback control device located at a playback location ... including ... memory to store digital media files and a continuous play program,” as recited in claims 1 and 59. The cited sections of Eyal merely disclose that the user terminal includes any network enabled multimedia computing platform, such as personal computers, PDA, smart phones and other devices. Eyal also discloses that the user terminal runs a playback module that is accessible over the Internet. Alternatively, the playback module may be preinstalled on the user terminal. Eyal further discloses that the playback module accesses playlists that are stored on an Internet server. The playback module may playback media processed by a backend system and stored in a media and metadata table upon receiving a request from the user terminal. Eyal discloses that, for example, music may be outputted from the user terminal continuously in a manner that resembles a jukebox, Disk Jockey Mix or a radio station.

There is no teaching or suggestion in Eyal of the user terminal, which the Office Action equates with the playback control device of the pending claims, including “an output device, memory to store digital media files and a continuous play program, and a controller to control the output of said digital media files to said output device according to said continuous play program,” as recited in claims 1 and 59. Eyal merely discloses that the user terminal may include a preinstalled playback module which is used to access playlists that are stored on the Internet server. Even if one skilled in the art were to equate the playback module of Eyal with the continuous play program, there is no teaching or suggestion in Eyal that the user terminal includes a “memory to store digital media files,” as recited in claims 1 and 59. Instead, Eyal discloses that the preinstalled playback module is used to access playlists that are stored on the Internet server. See Col. 15, lines 53-54 of Eyal. There is also no teaching or suggestion in Eyal of “a controller to control the output of said digital media files to said output device according to said continuous play program,” as recited in claims 1 and 59. In Eyal, there is no need for the user terminal to include “a controller to control the output of said digital media files to said

output device according to said continuous play program,” as recited in the pending claims, because the user terminal of Eyal obtains all of the playback functions from modules stored on the server-side. See Col. 13, line 65-Col. 14, line 9.

Claim 1 further recites that the “playback location is remotely located from a computer ... connected to a remotely located web server ... for serving digital media files from a master library, wherein said computer includes a user interface configured to allow a playback manager to access said web server ... to modify said continuous play program for each playback control device.

In addition claim 24, in part, recites “accessing a web server via the distributed communications system in response to input received at a user interface of a web browser of a computer, the computer located remotely from said web server and remotely located from said playback location” and “arranging at least one of digital media files or predetermined collections of said digital media files to create or modify a continuous play program for said playback control device via said web server.” Eyal also does not teach or suggest these features.

As for the computer of the pending claims, the Office Action indicated that terminal 210 is remotely located as shown in Figure 2 of Eyal. However, as noted above, the Office Action previously indicated that 210 of Eyal is equivalent to the playback control device located at a playback location. Although Figure 2 of Eyal shows that the user terminal is remotely located from a server modules and the Internet, there is no teaching or suggestion in Eyal of a computer located remotely from the playback location “wherein said computer includes a user interface configured to allow a playback manager to access said web server ... to modify said continuous play program for each playback control device,” as recited in claim 1.

There is also no teaching or suggestion in Eyal of “accessing a web server via the distributed communications system in response to input received at a user interface of a web browser of a computer, the computer located remotely from said web server and remotely located from said playback location” and “arranging at least one of digital media files or predetermined collections of said digital media files to create or modify a continuous play program for said playback control device via said web server,” as recited in claim 24.

Figure 1 of Eyal illustrates a system that builds a database of addresses to media sites. Each media site may provide access to media through one or more media links available at the

site. The system identifies and stores the media links for each site in a database. Each media link is verified to be available for playback and metadata is extracted from each media link. The system creates media playlists using the media database. See at least Col. 12, lines 1-67 of Eyal and Figure 1. The Office Action equates the playback manager of the pending claims to the editor disclosed in Eyal. Although Eyal discloses an editor that is able to experience the media played back from the web resource associated with the media link to be able to determine metadata information regarding the web resource, as illustrated in Figure 9, there is no teaching or suggestion in Eyal that the editor is “to modify said continuous play program for each playback control device,” as recited in claim 1. As noted above, the Office Action equates the continuous play program with a preinstalled playback module in the user terminal. In Eyal the editor is to modify metadata in a database and possibly a playlist. The editor of Eyal is not shown to modify the preinstalled playback module in the user terminal.

Furthermore, claim 1, in part, recites “wherein said computer is provided with one or more executable files from said web server to allow said playback manager to select one or more media files for audition without affecting said continuous play program.”

Claim 24, in part, recites “accessing one or more digital media files in response to user input receive via said user interface to audition the one or more digital media files without affecting the continuous play program.” There is also no teaching or suggestion that the editor (previously equated to the claimed playback manager in the Office Action) of Eyal is to select one or more media files for audition without affecting the preinstalled playback module (previously equated in the Office Action to the continuous play program) in the user terminal. Instead, Eyal discloses that the editor is to select one or more media files to extract the metadata. The editor of Eyal is therefore not equivalent to the playback manager recited in the pending claims and Applicants submit that Eyal contains no such equivalents.

Based on the distinctions noted above, Applicants submit that Eyal does not teach or suggest each of the features recited in independent claims 1 and 24. Each of claims 2-3, 24-28, 21, 25-26, 37-41, 44 and 47-52 depends on claims 1 and 24 and incorporates all of the elements of claims 1 and 24 in addition to the further features recited in claims 2-3, 24-28, 21, 25-26, 37-41, 44 and 47-52. Hence each of claims 2-3, 24-28, 21, 25-26, 37-41, 44 and 47-52 are also allowable at least because of the dependence on claims 1 and 24. Therefore, Applicants

respectfully request that this rejection of claims 1-3, 14-18, 21, 24-26, 37-41, 44 and 47-52 under 35 U.S.C. §102 be withdrawn.

Claim Rejections Under 35 U.S.C. §103

Claims 5, 28 and 53-56 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Eyal in view of U.S. Patent No. 6,970,834 to Martin (hereinafter “Martin”). Claims 6-13, 29-36, 19, 20, 22-23, 42-43, 45-46 and 57-58 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Eyal in view of U.S. Patent No. 5,726,909 to Krikorian (hereinafter “Krikorian”). These rejections are respectfully traversed.

Neither Martin nor Krikorian cures any of the deficiencies of Eyal, as outlined above. Therefore, Applicants respectfully request that this rejections of claims 5-13, 19, 20, 22-23, 28-36, 42-43, 45-46 and 53-58 under 35 U.S.C. §103 be withdrawn.

Disclaimer

Applicants may not have presented all possible arguments or have refuted the characterizations of either the claims or the prior art as found in the Office Action. However, the lack of such arguments or refutations is not intended to act as a waiver of such arguments or as concurrence with such characterizations.

CONCLUSION

In view of the above, consideration and allowance are respectfully solicited.

In the event the Examiner believes an interview might serve in any way to advance the prosecution of this application, the undersigned is available at the telephone number noted below.

The Office is authorized to charge any necessary fees to Deposit Account No. 22-0185.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 22-0185, under Order No. 27592-01055-US2 from which the undersigned is authorized to draw.

Dated: August 5, 2009

Respectfully submitted,

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